

## **DISPUTE RESOLUTION THROUGH ARBITRATION IN SALE AND PURCHASE AGREEMENT**

by

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### **ABSTRACT**

Dispute resolution outside the court can be grouped into two forms: dispute resolution carried out by the parties themselves and dispute resolution involving a third party. Regarding the involvement of this third party, it is also distinguished into two forms: a third party without decision-making authority (for example, a mediator) and a third party with decision-making authority. The legal force of an arbitration decision is the legal force for the disputing parties. is binding and must be implemented by the parties voluntarily. If the parties are unwilling to comply with the arbitration decision voluntarily, then the arbitration decision will be enforced. If any party objects to the arbitration body's decision, they can file an appeal. Objections must be filed within 14 (fourteen) working days from the time the business actor or consumer receives notification of the Consumer Dispute Resolution Body's decision.

**Keywords:** Settlement, Dispute, Arbitration.

## **PENYELESAIAN SENGKETA MELALUI ARBITRASE DALAM PERJANJIAN JUAL BELI**

### **ABSTRAK**

Penyelesaian sengketa di luar pengadilan dapat dibagi menjadi dua bentuk, yaitu penyelesaian sengketa oleh para pihak dan penyelesaian sengketa yang melibatkan pihak ketiga. Mengenai keterlibatan pihak ketiga, hal ini juga dibagi menjadi dua bentuk, yaitu pihak ketiga yang tidak berwenang untuk mengambil keputusan (misalnya: mediator) dan pihak ketiga yang berwenang untuk mengambil keputusan (arbitrator). Kekuatan hukum putusan arbitrase terhadap para pihak yang bersengketa bersifat mengikat dan harus dilaksanakan secara sukarela oleh para pihak. Jika para pihak tidak bersedia melaksanakan putusan arbitrase secara sukarela, maka putusan arbitrase akan dilaksanakan secara paksa. Jika ada pihak yang keberatan terhadap keputusan badan arbitrase, maka keberatan tersebut diajukan melalui kasasi. Keberatan diajukan dalam jangka waktu 14 (empat belas) hari kerja sejak pelaku usaha atau konsumen menerima pemberitahuan tentang keputusan Badan Penyelesaian Sengketa Konsumen.

**Kata Kunci:** Kekuatan Hukum, Putusan Arbitrase, Jual Beli

## INTRODUCTION

Trade disputes can arise at any time and anywhere between parties involved in business or trade activities. When a dispute arises in trade activities, the disputing parties can demand a swift and appropriate resolution and settlement. The parties involved in a trade dispute can freely choose the resolution method and the law to be used in accordance with the agreements agreed upon in the contract. Trade disputes can be resolved not only through the courts (*litigation*) but also through alternative dispute resolution methods outside the courts (*non-litigation*). Out-of-court dispute resolution has been a national philosophy for Indonesia since time immemorial, though it's not called "Out-of-Court Dispute Resolution." This dispute resolution is a philosophy of our ancestors that has developed within our society. For example, people in conflicting regions prefer to resolve their disputes through deliberation.

The emergence of the out-of-court dispute resolution model is inseparable from the growing disappointment and frustration with the courts. Amidst the collapse of public trust in the judiciary, efforts are needed to improve both the legal regulations and its facilities and infrastructure, including the morality (perhaps most importantly) of the human resources directly involved in the judiciary. Alternative Dispute Resolution (ADR) is essentially a form of out-of-court dispute resolution based on an agreement between the disputing parties. In the developed world, arbitration is considered an alternative dispute resolution method. This is because resolving business disputes through formal courts generally takes a long time due to the complex procedures of the judicial system. Furthermore, business circles believe that judges lack a better understanding of business dispute resolution than those involved in the business world itself.

Currently, the most common forms of alternative dispute resolution are negotiation, mediation, conciliation, and arbitration. As a consequence of the agreement between the disputing parties, Alternative Dispute Resolution is voluntary and therefore cannot be imposed by one party on the other. Arbitration is a term used to describe a form of peaceful procedure that is appropriate or provides a way to resolve disputes that arise so as to achieve a certain result that is legally final and binding. The main prerequisite for an arbitration process is the obligation for the parties to enter into a written agreement or arbitration agreement (*arbitration clause/agreement*) and then agree on the law and procedures for how they will finalize the settlement. Outside of arbitration, disputes are usually resolved by appointing lawyers to resolve the matter through or attempting to resolve the matter directly themselves.

## RESEARCH METHODS

The object of this research is the role of arbitration institutions in resolving sales and purchase disputes. The research is descriptive in nature. Descriptive research is intended to systematically describe or explain the legal rules related to the role of arbitration institutions in resolving sales and purchase disputes. The approach used is a normative juridical method. This normative juridical approach is used to study the laws and regulations related to the role of arbitration institutions in resolving sales and purchase disputes.

**RESULTS AND DISCUSSION**

Settlement of investment disputes through arbitration as an alternative out-of-court dispute resolution must follow established procedures. The procedure for litigation at the Indonesian National Arbitration Board (BNI) applies if the parties submit their case to the BNI and request that the BNI regulations apply.

The procedure for proceedings through the Indonesian National Arbitration Board is as follows:

1. Commencement of the arbitration proceedings

The arbitration procedure begins with the registration of a letter of application to hold arbitration in the register of the Indonesian National Arbitration Board by the secretary of the Indonesian National Arbitration Board.

2. Letter of request to hold arbitration

In order for a case to be examined by the Indonesian National Arbitration Board, an arbitration application letter must be submitted. According to the procedural regulations of the Indonesian National Arbitration Board, in order for the application letter to be accepted, the conditions that must be met as stipulated in Article 38 paragraph (2) of Law 30 of 1999 concerning Arbitration and Alternative Dispute Resolution are as follows:

a. The application letter must at least contain the following:

- (1) Full name and place of residence or domicile of both parties.
- (2) A brief description of the circumstances of the dispute
- (3) What is required

b. Attached to the application letter is a copy of the arbitration contract or a draft contract that specifically submits the dispute to arbitration.

c. If a power of attorney is requested from the parties, then along with the application letter a special power of attorney is also attached.

d. In the application letter, an arbitrator can be selected or the appointment of an arbitrator can be submitted to the chairman of the Indonesian National Arbitration Board.

e. Before registering an arbitration application, the registration and examination administration fees must first be paid in full.

3. If the request for resolution to arbitration is rejected

Before the case material is examined, the Indonesian National Arbitration Board may reject (not accept) the arbitration request if the arbitration contract or arbitration clause is deemed insufficient to form the basis for the Indonesian National Arbitration Board's authority. In this case, the decision to reject the arbitration request by the Indonesian National Arbitration Board must be notified to the arbitration applicant within a maximum of 30 days. The examination costs in this case must also be returned to the applicant.

4. Procedure for appointing arbitrators

Regarding the appointment of an arbitrator, there are various possibilities, namely:

- a. The most common is that each party chooses its own arbitrator and the third arbitrator will be appointed by the chairman of the Indonesian National Arbitration Board upon

the proposal of each of the arbitrators appointed by the parties.

- b. Each party selects its own arbitrator, and the third arbitrator is an outsider appointed by each arbitrator from the Indonesian National Arbitration Board. The appointment of a third external arbitrator is possible with the permission of the chairman of the Indonesian National Arbitration Board.
  - c. The applicant appointed its arbitrator, but the respondent did not appoint an arbitrator in its response. Therefore, in this case, the second arbitrator will be appointed by the Chairman of the Indonesian National Arbitration Board. Meanwhile, the third arbitrator, as chairman of the panel, will be appointed by the Chairman of the Indonesian National Arbitration Board from among the names proposed by the arbitrators of each party.
  - d. If the applicant or respondent has not appointed their own arbitrator, the Chair of the Indonesian National Arbitration Board will appoint a three-person arbitration team to handle the case.
  - e. If in simple cases, each party does not appoint its own arbitrator, then the chairman of the Indonesian National Arbitration Board will appoint one arbitrator who will be the sole arbitrator to handle the matter.
  - f. One or both parties appoint their own arbitrator but request the chairman of the Indonesian National Arbitration Board to appoint a third arbitrator from the Indonesian National Arbitration Board.
5. Order to appear before the Indonesian National Arbitration Board
- Once the arbitration respondent's response has been submitted, both parties will be summoned to appear before the Indonesian National Arbitration Board (BNBI) at the same time as the submission of the response to the applicant. The BNBI hearing must be held no later than 14 days after the issuance of the order to appear by the chairman of the BNBI.
6. If the respondent does not provide an answer
- In this case, if 30 days have passed since the order to appear before the chairman of the Indonesian National Arbitration Board but the respondent has not yet submitted his response, the chairman of the Indonesian National Arbitration Board will summon both parties to appear before him.
7. *Counter-Convention Demands*
- As in general court proceedings, arbitration proceedings also recognize what is known as a counterclaim. The procedural regulations of the Indonesian National Arbitration Board also recognize and regulate counterclaims (counterclaims). Under the Indonesian National Arbitration Board's procedures, counterclaims may be filed no later than the first day of the hearing. In this case, the counterclaim will be examined by the same arbitration panel and will be decided together with the arbitrator's original claim.
8. If the respondent does not come to court
- In this case, the chairman of the Indonesian National Arbitration Board will order that the respondent be summoned once again to a hearing that is set again, but the second

determination regarding the date of the first hearing must be made no later than 14 days from the issuance of the order.

9. If the applicant does not appear

If the applicant fails to appear on the appointed date despite having been duly summoned, the arbitration panel will dismiss the arbitration petition. Therefore, if the applicant fails to appear, there will be no second summons. This is reasonable, considering that the applicant, as the initiating party, should remain prepared to accept a summons from the arbitration panel.

10. The applicant's resistance

If a decision is rendered without the applicant's presence, the respondent may file a legal challenge against the decision. This challenge must be filed within 14 days of notification of the decision. This legal challenge is conducted in the same manner as an arbitration application, but is exempt from registration fees and other examination/administrative costs.

11. Peace efforts by arbitration

As in general court proceedings, in arbitration proceedings conducted by the Indonesian National Arbitration Board, the arbitrators first attempt to reach a settlement between the two parties. If this settlement is successful, meaning the parties reach a settlement before the arbitration, the arbitration panel will draft a deed *of settlement* and order both parties to comply with the settlement. However, if the parties fail to reach a settlement, the arbitration panel will continue examining the disputed matters.

12. Proof process

Regarding the evidentiary process before the Indonesian National Arbitration Board, the general law of evidence applies in principle. Therefore, the evidence under the general law of evidence remains valid, including evidence through witnesses, expert witnesses, or documentary evidence.

13. Examination of witnesses/expert witnesses

As previously mentioned, witnesses or expert witnesses may be heard during the evidence-based process. According to the Indonesian National Arbitration Board, hearings of witnesses or expert witnesses are conducted under the following conditions :

- a. Hearing of expert witnesses is carried out on orders from the Indonesian National Arbitration Board or at the request of interested parties
- b. The costs of witnesses or expert witnesses are charged in advance and payment must first be made to the secretary of the Indonesian National Arbitration Board.
- c. Witnesses or expert witnesses are asked to take an oath before giving their testimony.
- d. All examinations of witnesses or expert witnesses are conducted closed to the public.

14. Closed door inspection

In fact, not only must the examination of witnesses or expert witnesses before the Indonesian National Arbitration Board be conducted in private, but all proceedings within the Indonesian National Arbitration Board must be conducted in private. The same applies to nearly all arbitrations worldwide.

15. Withdrawal of arbitration request

As in general court proceedings, in arbitration proceedings, the withdrawal of a case already submitted to arbitration is permitted. The Indonesian National Arbitration Board also regulates the procedure for the applicant to withdraw an arbitration request. In this case, the Indonesian National Arbitration Board determines that the withdrawal of the request is permitted as long as a decision has not been rendered. However, if the respondent has already responded, the withdrawal of the request can only be made with the respondent's consent.

#### 16. Arbitration costs if the application is withdrawn

Regarding the examination costs that have been given to the arbitration in the event of the withdrawal of the arbitration application, the Indonesian National Arbitration Board determines the following:

- a. If the examination has not started, the examination fee will be returned in full to the applicant.
- b. If the examination has begun, then a portion of the examination fees will be refunded, the amount of which will be determined by the chairman of the Indonesian National Arbitration Board.

#### 17. Closing of the examination

Once the examination has been completed and the arbitration panel deems it sufficient, the chairperson will immediately declare the examination closed. This means that no further examination of any kind will be conducted against anyone.

#### 18. Decision making and pronouncement

At or after the hearing is closed by the chairperson, the chairperson will set a hearing date to pronounce the decision. In this case, to maintain legal certainty, according to the Indonesian National Arbitration Board, the arbitration panel must render and pronounce its decision within one month of the hearing's closure.

#### 19. arbitration award

The procedure for enforcement according to the Indonesian National Arbitration Board is that the losing party is first allowed to enforce the arbitration award themselves. However, in practice, the losing party, especially if dissatisfied with the arbitration award, will not voluntarily enforce the award. It may even delay or hinder the award. Therefore, the decision on the arbitration application in question also stipulates a timeframe for the enforcement of the award. If the award has not been implemented within the specified timeframe by the parties obligated to enforce it, the Chairman of the Indonesian National Arbitration Board will submit the award to the District Court for enforcement, if necessary by force in accordance with the applicable procedural law for enforcement in a general court. Therefore, the enforcement power of an arbitration award is equal in force and consequence to that of a general court decision.

#### 20. Arbitration costs

Regarding the costs that must be incurred for an arbitration, the cost components are as follows:

- a. Application registration fee

- b. Convention/reconvention administration/examination fees.
- c. Arbitrator fees
- d. Costs of summoning and traveling witnesses
- e. Travel expenses by arbitration
- f. Execution costs.

21. The party bearing the cost burden

Regarding the party who must bear the burden of administrative/examination costs, the following provisions apply :

- a. Borne by the respondent.

According to the Indonesian National Arbitration Board, administrative costs and examination costs are borne entirely by the respondent if the application is granted by the arbitration panel or the applicant's position is fully justified.

- b. Borne by the applicant

If the applicant's claim is rejected by the arbitration panel, all costs will be borne by the applicant.

- c. Borne jointly by the applicant and the respondent.

However, sometimes the demands of the arbitration applicant are partly accepted and partly rejected, so in cases like this the burden of administrative and examination costs is borne by both parties according to provisions deemed fair by the Indonesian National Arbitration Board.

Thus, the basis for appointing an arbitration body to resolve a dispute is the agreement of both parties to have the dispute resolved through an arbitration body. A written arbitration agreement eliminates the parties' right to submit disputes or differences of opinion contained in the agreement to the District Court.

It can be said that there is a consensus among legal practitioners that arbitration agreements must be written down. Oral arbitration agreements are considered invalid and non-binding. Oral arbitration agreements are considered to have never *existed* .

According to the general explanation of Law Number 30 of 1999, in general the arbitration institution has advantages compared to the judicial institution, namely:

1. Confidentiality of disputes between the parties is guaranteed
2. Delays caused by procedural and administrative matters can be avoided.
3. The parties can choose an arbitrator who they believe has sufficient knowledge, experience and background regarding the disputed issue, is honest and fair.
4. The parties can determine the choice of law to resolve the problem as well as the process and place of holding the arbitration.
5. The arbitrator's decision is a decision that is binding on the parties and can be implemented through simple procedures or directly.

Dispute resolution through arbitration institutions is preferred by economic actors in national and international business contracts, due to its confidential nature, simple procedures and the arbitrator's decision being binding on the parties because the decision given is final.

The basic objectives of people involved in a business dispute in choosing an arbitration institution to resolve the dispute are:

1. Freedom, trust and security

Arbitration is generally attractive to businessmen, traders and investors because it gives them a great deal of freedom and autonomy.

2. Expertise.

The disputing parties have greater confidence in the arbitrator's expertise regarding the disputed issues than in the court.

3. Fast and cost effective

As a process, arbitration is less formal, making it more flexible than court litigation. Consequently, arbitration's decision-making process is faster, making dispute resolution relatively cheaper than litigation, as arbitration decisions lack the possibility of appeal.

4. Confidential

Because arbitration is more private and closed than court proceedings, disputes are handled confidentially. This protects the parties from adverse publicity and its consequences, which are difficult to avoid in district courts because district courts are bound by the principle of open proceedings, which allows everyone to attend and listen to court proceedings.

5. Considerations of arbitration decisions are more private in nature

The considerations for resolving private disputes in court and arbitration are very different. Courts are public institutions, so when resolving private disputes, they often use the opportunity to prioritize the public interest, while private interests are a secondary consideration. Conversely, arbitration forums are private institutions, and therefore, arbitrators consider resolving disputes they handle more privately than publicly.

6. Modern trends

In the world of international trade, the visible trend is the liberalization of arbitration laws and regulations to encourage the use of arbitration rather than the resolution of trade disputes through general courts.

7. The arbitration award is final and binding

In accordance with the wishes and intentions of business actors, who want dispute resolution decisions in arbitration forums to be final and binding *on* both parties, various legal remedies are still available to court decisions, so obtaining a legally binding decision takes a long time.

The process of resolving disputes through arbitration, one of several alternative dispute resolution methods, is actually not unfamiliar. Indonesian society is fundamentally familiar with the values of consensus and cooperation in resolving disputes between them. The legal consequences or impact of an arbitration decision for the parties are *final* and *binding*. This principle is reflected in Article 60 of the Arbitration Law, which states, "An arbitration decision is final and has permanent legal force and is binding on the parties." The meaning of a final decision *is* that the Arbitration Court's decision is the first and final instance decision. This means that an arbitration decision cannot be appealed, cassated, or judicially reviewed.

*binding* decision is that the decision is immediately binding on the parties from the

moment it is rendered. This *final* and *binding arbitration decision* provides the privilege of litigating through an arbitration institution because it can save time, money, thought, and energy for the parties involved in the case.

The role of arbitration awards as a legal source in arbitration is extremely weak. The primary reason is the confidential nature of arbitration, with the proceedings and the award being closed or secret. Indeed, this confidentiality makes it unlikely that arbitration awards will serve as a legal source that could enrich arbitration law. While this is a weakness from a legal source perspective, this confidentiality is precisely one of its strengths and the reason why entrepreneurs and traders choose arbitration. According to Law Number 30 of 1999, the parties to an agreement have the right to request an opinion from an arbitration institution regarding certain legal relations of an agreement without any dispute. In response to requests submitted by the parties to an agreement, the arbitration institution will provide a binding opinion.

Once an opinion is rendered by the arbitration institution, both parties are bound by it, and if either party acts contrary to that opinion, they will be deemed to have breached the agreement. No legal action, including appeal or cassation, may be filed against this binding opinion. The provisions of Article 54 paragraph (1) of Law Number 30 of 1999 state that an arbitration decision must contain a decision heading which reads "FOR THE SAKE OF JUSTICE BASED ON THE ONE ALMIGHTY GOD, full names and addresses of the parties, a brief description of the dispute, the parties' position, full name and address of the arbitrator, considerations and conclusions of the arbitrator or arbitration panel regarding the entire dispute, the opinion of each arbitrator in the event of a difference of opinion in the arbitration panel, the decision, place and date of the decision, and the signature of the arbitrator or arbitration panel."

The sentence of the decision containing the words "for the sake of justice based on the One Almighty God" implies that the arbitration decision has the same legal force as other civil court decisions. This is in accordance with Article 2 of Law No. 4 of 2004 concerning Judicial Power, which states that the trial is carried out for the sake of justice based on the One Almighty God. Article 59 paragraph 2 of Law No. 48 of 2009 concerning Judicial Power emphasizes that the arbitration decision is final and has permanent legal force and is binding on the parties. According to Article 59 paragraph (1) and paragraph (2) of Law Number 30 of 1999 concerning Arbitration and Dispute Resolution, registration of an arbitration award must be carried out within a maximum of 30 (thirty) days from the date the award is pronounced, the original or authentic copy of the arbitration award must be submitted and registered by the arbitrator or his attorney to the clerk of the district court and the clerk will be given a note which constitutes a registration deed. However, failure to comply with these provisions will result in the arbitration award not being able to be implemented.

Once an arbitration award has been issued by the head of the district court, it will be executed in accordance with the provisions for the enforcement of decisions in civil cases where the decision has permanent legal force. The order to enforce the decision must be executed within a maximum of 30 (thirty) days after the application for execution is filed. The legal force possessed by an arbitration decision provides an interpretation that the arbitration decision can

be immediately implemented (executed) after the arbitration decision is issued based on the order of the Head of the District Court at the request of one of the disputing parties, which of course after fulfilling the requirements stipulated in the statutory regulations. According to Suleman Batubara, an arbitration decision legally has executorial power, meaning that the decision can be legally executed immediately after the decision is issued, while one that does not have executorial power means that the decision cannot be automatically executed but requires other legal action so that the decision can be executed. This is in accordance with the legal principle adopted, namely that a decision can only be executed if the decision has permanent legal force unless otherwise specified.

## CONCLUSION

Dispute resolution through arbitration institutions as an alternative to dispute resolution outside the courts. While the general process of dispute resolution through the courts is essentially the same, the institutional structure of arbitration differs significantly from that of the courts. Enforcement of an arbitration award is voluntary, and if the parties are unwilling to comply with the voluntary enforcement of the arbitration award, the arbitration award may be enforced. The terms of the arbitration clause, in principle, must not exceed the terms of the principal agreement. This means that the arbitration clause must address dispute resolution issues relevant to the principal agreement. The arbitration clause must not deviate from and contain dispute resolution issues unrelated to the principal agreement. The legal force of the arbitration institution's decision on the disputing parties is binding and must be voluntarily implemented by the parties. If the parties are unwilling to voluntarily comply with the arbitration award, it will be enforced. For an arbitration award to be enforced, it must first be registered in a registration deed at the District Court clerk's office.

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